

January 14, 1976

By Messenger

Hon. John P. Grady
United States District Court
For The Northern District of
Illinois
United States Courthouse
219 South Dearborn Street
Chicago, Illinois 60604

Re: The Magnavox Company, et al. v. Bally
Manufacturing Corporation, et al.
Consolidated Civil Action Nos. 74 C 1930
and 74 C 2510 - Our File No. 33656

Dear Judge Grady:

At the status call in the above matter before Your Honor on January 12 (10:45 a.m.), it was brought to the Court's attention that a motion of defendant Midway Mfg. Co. to sever and transfer had been filed on August 11, 1975, and is still pending without decision. You indicated that you would look at the motion before the pretrial conference on discovery matters scheduled for 9:15 a.m. on Monday, January 19.

This motion was brought by defendant Midway to transfer this action as it relates only to this defendant to the Southern District of New York for consolidation with an earlier filed action there, entitled Midway Mfg. Co. v. The Magnavox Company and Sanders Associates, Inc., 74 Civ. 1657 CHM, filed April 12, 1974, and thereby to avoid the burden on Midway of having to conduct proceedings in two different courts against the same parties and on the same issues. Every issue in dispute between Midway and plaintiffs here is also in dispute in the New York action, but there are additional issues in dispute there which are not present here.

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Midway was not one of the original defendants in this action, filed April 15, 1974, but was added as an additional defendant by plaintiffs' first amended complaint on May 22, 1974, more than a month after both Midway's New York action and the plaintiffs' Chicago action had been filed.

In respect to this motion, the following memoranda have been filed by the parties:

(1) Memorandum in Support of the Motion of Defendant Midway Mfg. Co. to Sever and Transfer with Appendix of Exhibits A through E, filed September 9, 1975.

(2) Plaintiffs' Memorandum in Opposition to Midway's Motion to Sever and Transfer with Attachments A through C, filed September 29, 1975.

(3) Reply Memorandum in Support of Midway's Motion to Sever and Transfer with Appendix of Exhibits F through J, filed October 6, 1975.

Prior to the filing of this motion by Midway, Magnavox and Sanders had filed in the New York action a motion to dismiss, stay or transfer that action to Chicago for consolidation with this action. That motion by Magnavox and Sanders in New York was assigned to a Federal Magistrate for hearing and recommendation, and the Magistrate's recommendation, made in a written opinion and cover letter dated July 28, 1975, was that the motion be denied in all respects. (See Exhibit D of Midway's Memorandum of September 9, 1975.) Midway's motion here to sever and transfer was then filed promptly after receipt of the Magistrate's Opinion, but the briefing schedule here, noted above, was actually completed prior to the New York Court's entry of its decision on the Magnavox and Sanders motion. That decision issued as a Memorandum, Opinion and Order dated November 7, 1975, in which Judge Motley endorsed the report of the Magistrate and ordered that the motion of Magnavox and Sanders to dismiss, stay or transfer the New York case be denied in all respects. A copy of this Memorandum, Opinion and Order is attached hereto as Attachment 1.

Subsequently, Magnavox and Sanders filed a motion for reconsideration and rehearing of the New York Court's decision on their motion, and that Court denied the motion for rehearing and reconsideration of its previous decision denying their motion to dismiss, stay or transfer the case here. A copy of this order is attached hereto as Attachment 2.* (See footnote on Page 3.)

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During this period, Midway was attempting to obtain discovery in the New York action by interrogatory and oral deposition, papers being filed both in the New York action as well as here.

There is now no question but that Midway's action in New York will continue to go forward there, and it is unfair to require that Midway continue duplicate proceedings in two different courts. This is especially so when Midway was belatedly joined here as an additional defendant merely to shore up the unsuccessful motion of Magnavox and Sanders in New York.

Copies of the attached papers were previously supplied to Judge Flaum with letters of November 10 and December 17, 1975.

Respectfully submitted,

FITCH, EVEN, TABIN & LUBSKA

By

A. Sidney Katz
Attorneys for Defendant
Midway Mfg. Co.

ASK:cm1
Enclosures
(Attachments 1 & 2)

cc: Theodore W. Anderson, Esq.
Neuman, Williams, Anderson & Olson

Edward C. Thready, Esq.
Thready & Thready

Helvin M. Goldenberg, Esq.
McDougall, Hersh & Scott

William Marshall Lee, Esq.
Lee & Smith

* Because of illegibility of the copy, the Order is quoted below:

"The within motion to reconsider defendants' motion to transfer the instant case to the Northern District of Illinois is denied.

New York, New York
December 10, 1975

So Ordered
Constance Baker Motley
U.S.D.J."

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK.

MIDWAY MFG. CO.,
a Corporation,

Plaintiff,

v.

THE MAGNAVOX COMPANY,
a Corporation,

and

SANDERS ASSOCIATES, INC.,
a Corporation,

Defendants.

Civil Action
No. 74 Civ. 1657 CBM

NOTICE OF TAKING DEPOSITIONS

To: John Thomas Cella, Esq.
Fitzpatrick, Cella, Harper & Scinto
277 Park Avenue
New York, New York 10017

PLEASE TAKE NOTICE that, at 10:00 a.m., on the 19th day of November, 1975, at the Holiday Inn at the Amoskeag Bridge Exit from Highway I-93, in Manchester, New Hampshire, plaintiff Midway Mfg. Co. will take the depositions of the following employees of defendant Sanders Associates, Inc., Nashua, New Hampshire, and possibly others pursuant to the Federal Rules of Civil Procedure:

Ralph H. Baer
Sanders Associates, Inc.
Merrimack, New Hampshire

David E. Batchelder
Sanders Associates, Inc.
Nashua, New Hampshire

H. W. Campman, Jr.
Sanders Associates, Inc.
Daniel Webster Highway, South
Nashua, New Hampshire

John Sauter
Sanders Associates, Inc.
Nashua, New Hampshire

Daniel C. Chisholm
Sanders Associates, Inc.
Daniel Webster Highway, South
Nashua, New Hampshire

Louis Etlinger
Sanders Associates, Inc.
Daniel Webster Highway, South
Nashua, New Hampshire

William L. Harrison
Sanders Associates, Inc.
95 Canal Street
Nashua, New Hampshire

John A. Melrose
Sanders Associates, Inc.
Daniel Webster Highway, South
Nashua, New Hampshire

William T. Rusch
Sanders Associates, Inc.
Simon Street
Nashua, New Hampshire

Richard I. Seligman
Sanders Associates, Inc.
Daniel Webster Highway, South
Nashua, New Hampshire

William Stapanishen
Sanders Associates, Inc.
Nashua, New Hampshire

The depositions will be taken upon oral examination before a Notary Public or other officer authorized by law to administer oaths and will continue from day to day until completed.

A subpoena duces tecum is to be served on each of the parties to be deposed. The designation of the materials to be produced as stated in the subpoena is set forth in Attachment A hereto.

MIDWAY MFG. CO.

October 28, 1975

By:

Donald L. Welsh
Donald L. Welsh, Esq.
Fitch, Even, Tabin & Luedeka
135 South LaSalle Street
Chicago, Illinois 60603
(312) 372-7842

Richard A. Huettnner, Esq.
Kenyon and Kenyon, Reilly,
Carr and Chapin
59 Maiden Lane
New York, New York 10038
(212) 425-7200

Attorneys for Plaintiff

ATTACHMENT A

All documents and things* constituting or referring or relating to:

(1) The assignment of rights in the alleged inventions of Sanders' patents** from the named inventor(s) and/or negotiations relating thereto.

(2) The licensing or sale by the inventor(s) or either defendant of rights in the alleged inventions of said patents** and/or negotiations relating thereto.

(3) Communications between defendant Magnavox and defendant Sanders relating to:

(a) Any business arrangement or agreement between them involving the alleged inventions or subject matter of said patents.

(b) Sublicensing of any other party under said patents or the applications therefor.

(c) Licensing or sublicensing under any foreign patent or foreign patent application corresponding to said patents.

* N.B. The term "documents and things" includes but is not limited to circuit diagrams, computer programs, computer program listings, magnetic tapes, punched paper tapes, other storage media, flow charts, block diagrams, photographs, drawings, manuals, instructions, contracts, correspondence, communications and records of communications, brochures, information sheets, logic diagrams, wiring diagrams, articles in periodicals, memoranda, and notes. The documents and things listed in this Attachment A include all of the documents and things produced by defendant Sanders Associates, Inc., in Consolidated Civil Actions Nos. 74 C 1030 and 74 C 2510 in the U.S. District Court for the Northern District of Illinois (herein referred to as the "Chicago actions"), pursuant to DEFENDANT MIDWAY'S REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS FROM PLAINTIFFS filed July 8, 1975 in the Chicago action and originals and copies thereof in the custody of or under the control of the witness, and in particular include undeleted versions of documents previously produced with material deleted.

** In the categories of documents listed the term "Sanders' patents", or "said patents" refers to U.S. Patents 3,659,284; 3,659,285; 3,728,480, 3,778,058, Re.28,507 and the application for reissue of U.S. Patent No. 3,659,285, unless otherwise specified.

(d) Royalty or other payment made or collected in connection with or under said patents or any license relating thereto.

(e) The strengths and/or weaknesses of said patents.

(f) Infringement of said patents, or the possibility thereof, by any party.

(g) Misuse of said patents, or the possibility thereof, by either defendant.

(h) Antitrust violations, or the possibility thereof, by either defendant in the licensing or enforcement of said patents.

(i) Any other matters pertaining to said patents or the applications for said patents or any reissues thereof.

(j) Any other matters relating to the alleged inventions or subject matter of said patents.

(4) The investigation by Magnavox and/or Sanders of possible infringement of said patents and/or the examination of any video games in connection with such investigation.

(5) The examination by any of the named inventors of said patents or either defendant of any game or training device (or documents disclosing same) employing a cathode ray tube displaying at least two images to the viewer, operating with or without a raster scanning beam sweep of any type, and containing circuitry for detecting or responding to coincidence of the position of the images.

(a) prior to January 15, 1968.

(b) between January 15, 1968 and
May 27, 1969.

(c) between May 27, 1969 and
April 15, 1974.

(6) All drawings, circuit diagrams, written descriptions, notes, memoranda and other documents relating to the conception, reduction to practice, testing and development of the alleged inventions of said patents.

(7) The records mentioned by defendants in their response to Interrogatory 11 of CDI in the Chicago actions.

(8) The press release relating to the filing of the Chicago actions issued by Magnavox, and notes, correspondence and any other documents relating thereto.

(9) Communications to any of the following persons relating to this or the Chicago actions or to said patents:

(a) Mr. Dimitri Allegretti
Molinare, Allegretti, Newitt
& Witcoff
1400 LaSalle Bank Building
135 South LaSalle Street
Chicago, Illinois 60603

(b) Mr. Richard C. Martin
Brookes & Martin
1 Boyne Park, Tunbridge Wells
Kent TN4 8EL
England

(c) Alca Electronics, Ltd.
Alca House
Goddard Street
Oldham OL 8 1LQ
Lancashire
England

- (d) Coughtrey's Automatic Supplies
Limited
Auto House, Derby Road
Triumph Road, Lenton
Nottingham
England
- (e) London Coin Machines, Ltd.
22-24 Bromells Road
London SW4 OBQ
England
- (f) Associated Leisure Sales, Ltd.
Phonographic House
The Vale
London NW118SU
England
- (g) Coin Concession Ltd.
213 Longley Road
London SW17
England
- (h) Atari (U.K.) Ltd.
29A Draycott Road
Breaston, Derbyshire
England

(10) The documents identified in defendants' response to Interrogatory 15 of CDI in the Chicago actions.

(11) All drawings and/or circuit diagrams of the alleged inventions of said patents made up to and including their respective reductions to practice.

(12) All documents offered by defendants in defendants' response to Interrogatory 32 of CDI in the Chicago actions.

(13) The first disclosure of the alleged inventions of said patents by Sanders to a person not associated with Sanders.

(14) The disclosure and/or demonstration of the alleged inventions of said patents to the following companies and any agreements or communications or memoranda relating thereto:

- (a) Teleprompter Corporation
- (b) Merrimack Valley CATV
- (c) RCA Corporation
- (d) General Electric Company
- (e) Sylvania Electric Products, Inc.
- (f) Zenith Radio Corporation
- (g) Institute for Analytical Research
- (h) Motorola

(15) The first solicitation and the initial order for the sale of apparatus by defendants embodying the alleged inventions of said patents.

(16) The initial delivery on any order for the sale of apparatus by defendants embodying the alleged inventions of said patents.

(17) The documents identified in defendants' response to Interrogatory 62 of CDI in the Chicago actions.

(18) All prior art cited during the prosecution and examination of said patents and of all corresponding foreign patents and patent applications.

(19) (a) The patents and applications identified under A through U in defendants' response to Interrogatory 81 of CDI in the Chicago actions, and

(b) all other documents relating to the prosecution or examination of each such patent and application.

(20) Sales invoices and other records of Magnavox evidencing the monthly sales by units and dollar amounts of its apparatus embodying the alleged inventions of said patents from the initial sale to date.

(21) Business records of Magnavox evidencing the monthly advertising expenditures of Magnavox for its apparatus embodying the alleged inventions of said patents from the initial offer for sale or first advertisement, of such apparatus, whichever is earlier, to date.

(22) Business records of Magnavox evidencing the monthly sales expenditures (such as promotional expenses and commissions) of Magnavox for its apparatus embodying the alleged inventions of said patents from the initial offer for sale or first advertisement of such apparatus, whichever is earlier, to date.

(23) Business records of Magnavox showing numbers of units and times of manufacture of its apparatus embodying the alleged inventions of said patents from the initial manufacture of such apparatus to date, on a monthly basis.

(24) Business records and documents of Sanders Associates evidencing commercial success of the alleged inventions of:

- (a) Patent 3,659,284
- (b) Patent 3,659,285
- (c) Patent 3,728,480
- (d) Patent 3,778,058
- (e) Patent Re.28,507.

(25) The preparation, filing and prosecution of the application for reissue of Patent 3,659,285 and any other reissue applications relating to said patents.

(26) The work assignments of each of the named inventors of said patents, other than the alleged inventions of said patents, prior to August 21, 1969 wherein such assignments involved or related to the use of a cathode ray tube (CRT) and circuitry for causing images to be displayed on the CRT and for detecting or responding to coincidence of such images.

(27) All schematic and production drawings and specifications for Magnavox Model No. 1TL200.

(28) All documents relating to the design, construction, operation, testing and demonstration of the Sanders' models referred to in Plaintiffs' Response to Defendant Midway's Interrogatory No. 56 in the Chicago Action.

(29) All documents and things requested to be identified in "Defendant Midway's First Set of Interrogatories to Plaintiff Sanders Associates, Inc. (Nos. 1 through 81)" in the Chicago actions and "Defendant Midway's First Set of Interrogatories to Plaintiff The Magnavox Company (Nos. 1 through 81)" in the Chicago actions and either identified or offered to be produced in defendants' original and supplemental responses to such interrogatories, including Interrogatories Nos. 4, 5, 6, 7, 8, 9, 10, 11, 12a, b, c, d, e, 20, 22, 23, 42, 49, 56, 75, 76, 77, 78, 79, 80 and 81.

(30) All documents and things known to defendants dated or known prior to August 21, 1969, relating or referring to the use of a cathode ray tube (CRT) and circuitry for causing images to be displayed on the CRT and for detecting or responding to coincidence of such images.

AFFIDAVIT OF SERVICE

STATE OF ILLINOIS)
COUNTY OF COOK) SS

_____, being duly sworn, says
that he served the foregoing NOTICE OF TAKING DEPOSITIONS on
defendants this _____ day of October, 1975, by mailing one
copy first class mail to:

John Thomas Cella, Esq.
Fitzpatrick, Cella, Harper & Scinto
277 Park Avenue
New York, New York 10017

and by delivering one copy to the office of:

Theodore W. Anderson, Esq.
Neuman, Williams, Anderson & Olson
77 West Washington Street
Chicago, Illinois 60602

Subscribed and sworn to at Chicago, Illinois
this _____ day of October, 1975.

Notary Public

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

MIDWAY MFG. CO.,
a Corporation,

Plaintiff,

v.

THE MAGNAVOX COMPANY,
a Corporation,

and

SANDERS ASSOCIATES, INC.,
a Corporation,

Defendants.

Civil Action
No. 74 Civ. 1657 CBM

SUPPLEMENTAL NOTICE OF DEPOSITION

To: John Thomas Cella, Esq.
Fitzpatrick, Cella, Harper & Scinto
277 Park Avenue
New York, New York 10017

PLEASE TAKE NOTICE that, at 10:00 a.m., on the 20th day of November, 1975, at the Holiday Inn at the Amoskeag Bridge exit from Highway I-93, in Manchester, New Hampshire, plaintiff, Midway Mfg. Co. will take the deposition of Sanders Associates, Inc., of Nashua, New Hampshire, pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, in respect to the documents and things set forth in Attachment A hereto, which are to be brought to the deposition. A subpoena duces tecum will be served on this deponent. The deposition will be upon oral examination before a Notary Public or other officer authorized by law to administer oaths and will continue from

day to day until completed. The deponent may designate, if appropriate, any of the individuals named in the Notice of Taking Depositions dated October 28, 1975.

November 12, 1975



Donald L. Welsh, Esq.
Fitch, Even, Tabin & Luedeka
135 South LaSalle Street
Chicago, Illinois 60603
(312) 372-7842

Richard A. Huettnner, Esq.
Kenyon and Kenyon, Reilly,
Carr and Chapin
59 Maiden Lane
New York, New York 10038
(212) 425-7200

Attorneys for Plaintiff :

ATTACHMENT A

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April 15, 1974.

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(b) Mr. Richard C. Martin
Brookes & Martin
1 Boyne Park, Tunbridge Wells
Kent TN4 8EL
England

(c) Alca Electronics, Ltd.
Alca House
Goddard Street
Oldham OL 8 1LQ
Lancashire
England

- (d) Coughtrey's Automatic Supplies
Limited
Auto House, Derby Road
Triumph Road, Lenton
Nottingham
England
- (e) London Coin Machines, Ltd.
22-24 Bromells Road
London SW4 OBQ
England
- (f) Associated Leisure Sales, Ltd.
Phonographic House
The Vale
London NW118SU
England
- (g) Coin Concession Ltd.
213 Longley Road
London SW17
England
- (h) Atari (U.K.) Ltd.
29A Draycott Road
Breaston, Derbyshire
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- (c) Patent 3,728,480
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(25) The preparation, filing and prosecution of the application for reissue of Patent 3,659,285 and any other reissue applications relating to said patents.

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(Nos. 1 through 81)" in the Chicago actions and "Defendant Midway's First Set of Interrogatories to Plaintiff The Magnavox Company (Nos. 1 through 81)" in the Chicago actions and either identified or offered to be produced in defendants' original and supplemental responses to such interrogatories, including Interrogatories Nos. 4, 5, 6, 7, 8, 9, 10, 11, 12a, b, c, d, e, 20, 22, 23, 42, 49, 56, 75, 76, 77, 78, 79, 80 and 81.

(30) All documents and things known to defendants dated or known prior to August 21, 1969, relating or referring to the use of a cathode ray tube (CRT) and circuitry for causing images to be displayed on the CRT and for detecting or responding to coincidence of such images.

AFFIDAVIT OF SERVICE

STATE OF ILLINOIS)
COUNTY OF COOK) SS

_____, being duly sworn, says that
_he served the foregoing SUPPLEMENTAL NOTICE OF DEPOSITION
on defendants this _____ day of November, 1975, by mailing
one copy first class mail to:

John Thomas Cella, Esq.
Fitzpatrick, Cella, Harper & Scinto
277 Park Avenue
New York, New York 10017

and by delivering one copy to the office of:

Theodore W. Anderson, Esq.
Neuman, Williams, Anderson & Olson
77 West Washington Street
Chicago, Illinois 60602

Subscribed and sworn to at Chicago, Illinois
this _____ day of November, 1975.

Notary Public